

In these circumstances I find that the notice to quit was bad and that for this reason the appeal must succeed. The appeal will be allowed with costs and the respondents must also pay to the appellant the costs in the Sessions Court.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; Lovelace & Hastings.*

M. WEINBERG v. LIM SEOW PENG

[C. A. (Murray-Aynsley C.J., Storr and Knight JJ.)
July 8, 1955]

[Singapore—Civil Appeal No. 10 of 1955]

Landlord and Tenant—Tenant not in actual occupation—Tenant not a party to ejectment proceedings—Whether order for possession against husband deprives her of her rights in the premises—Control of Rent Ordinance, 1953.

In this case ejectment proceedings were taken by the landlord against the husband of the tenant, whilst she was abroad. An order for possession was accordingly made against him. The husband now appeals against that decision.

Held: once a person was in possession he could only be deprived of the protection of the Ordinance by going out of possession or having an order for possession made against him (*Brown v. Draper*⁽³⁾). In this case, as the tenant had not abandoned her rights over the premises, the effect of the order for possession against her husband would be to deprive her of those rights, and therefore the appeal must be allowed.

Cases referred to:—

- (1) *Renon v. City of London Real Property Co.* (1921) 1 K.B. 49.
- (2) *Cruise v. Terrell* (1922) 1 K.B. 664.
- (3) *Brown v. Draper* (1944) 1 K.B. 309; (1944) 1 All E.R. 246.

COURT OF APPEAL.

R. H. Green for the appellant.

P. F. X. Leonard for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J.:—In this case the appellant's wife was a contractual tenant of a dwelling house to which the Control of Rent Ordinance applied. She left the Colony leaving her husband in the premises and is still away. The contractual tenancy was duly determined and proceedings in ejectment were taken by the respondent against the appellant to which the wife was not a party. Circumstances had arisen which

would have conferred jurisdiction on the Court to make an order for possession against the tenant if proceedings had been taken against her. Judgment was given in favour of the owner of the premises, and against that decision an appeal is now brought.

It is clear that the wife of the appellant has not abandoned her rights over the premises and, except as provided by section 16, actual occupation by the person claiming protection of the Ordinance is immaterial. That section does not apply to the present case.

At an early stage in the history of the Rent Acts in England (which like the local Ordinance impose restriction on the Courts in claims for possession) it was decided that where protection is given by the Acts the landlord cannot avail himself of extra-judicial means of obtaining possession; (see *Renon v. City of London Real Property Co.*⁽¹⁾ and *Cruise v. Terrell*⁽²⁾). This was not because there was any express provision to that effect but because, unless the Courts supplied such a provision, the protection given by the Acts would be nugatory. As a result of development of case law the position in England is as laid down in *Brown v. Draper*⁽³⁾, to the effect that once a person was in possession he could only be deprived of the protection of the Acts by going out of possession or having an order for possession made against him. It is clear that the wife of the appellant still retains rights in the house and the effect of an order for possession against the husband would be to deprive her of those rights. That, in my opinion, would be a sufficient reason for allowing the appeal.

I consider that the English cases should be applied in the Colony, because the conditions which rendered them necessary in England prevail here. *Brown v. Draper*⁽³⁾ covers the point and is a stronger case because there the husband had deserted the wife against whom proceedings were taken and had given evidence to the effect that he had no interest in the house.

It is unfortunate that in the Court below the appellant was unrepresented and the relevant cases were not cited.

I think that the judgment of the Court below must be set aside and judgment entered for the appellant with costs here and below. Deposit to appellant.

Storr and Knight JJ. concurred.

Appeal allowed.

Solicitors: *Braddell Bros.; Sisson & Delay.*